

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6029 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI

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1. Whether Reporters of Local Papers may be allowed : YES
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

STAR STEEL PVT LTD.

Versus

BARISTER YADAV

Appearance:

MR MK SHELAT FOR MR SN SHELAT for Petitioner
MR RK MISHRA for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI

Date of decision: 23/06/2000

ORAL JUDGEMENT

1. The petitioner - company challenges the judgement
and award of the Industrial Tribunal, Vadodara dated 17th
June 1989 made in favour of the respondent, declaring
that the order of dismissal dated 29th November 1983 made
against the respondent was illegal and directing him to

be reinstated with arrears of wages w.e.f. 29th November 1983 and other consequential benefits.

2. The Tribunal, on the basis of the evidence on record, came to a finding that the order made against the respondent was passed in contravention of the provision of section 33[2] of the Industrial Disputes Act, 1947 and therefore, could not be sustained.

3. It was contended on behalf of the petitioner that the Tribunal had committed an error of law in holding that there was a breach of the provision of section 33[2] of the said Act in making the order of dismissal. It was further contended that, having found that there was a breach of the said provision, it was not open to the Tribunal to examine the merits of the matter. It was also contended that there was no valid reason for the Tribunal to infer that the inquiry officer was prejudiced because he had recommended exemplary penalty against the respondent.

4. It is not disputed that Reference No. 777/81 in which the union representing the workmen including the respondent was a party, was pending at the relevant time. As laid down in section 33[2] of the said Act, during the pendency of any such proceeding in respect of an industrial dispute, no employer shall for any misconduct connected with the dispute discharge or punish whether by dismissal or otherwise any workman concerned in the dispute save with the express permission in writing of the authority before which the proceeding is pending. Admittedly, no such permission was obtained in respect of the order of dismissal. Furthermore, admittedly no wages for one month period were given to the respondent as per the proviso to sub-section [2] of section 33 of the Act. The Tribunal referred to the fact that affidavits were filed by the respondent which were not controverted in his cross-examination. It is thus clear that the Tribunal has in lawful exercise of its jurisdiction and on the basis of material on record, come to a finding that there was a breach committed of the provision of section 33 of the said Act in issuing the order of dismissal of the respondent.

5. There is therefore no warrant for any interference with the impugned award in exercise of powers of this Court under Article 227 of the Constitution under which the present petition has been filed. Rule is therefore discharged with no orders as to costs. Interim relief stands vacated.

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